

40 and 7 United Super, Inc. d/b/a United Super and United Food and Commercial Workers Local No. 782. Cases 17-CA-9962 and 17-CA-10011

July 13, 1981

DECISION AND ORDER

Upon charges filed on October 8, 15, and 30 and November 3 and 26, 1980,¹ by United Food and Commercial Workers Local No. 782, herein called the Union, and duly served on 40 and 7 United Super, Inc. d/b/a United Super, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued complaints on November 7 and December 4 against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (3), (5), and 8(d) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and complaints and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaints allege in substance that the Respondent violated Sections 8(a)(1), (3), (5), and 8(d) of the Act by: (1) threatening to close its facility unless a pending grievance was withdrawn; (2) threatening employees with discharge because of pending grievances; (3) directing an employee to contact the Union and request the Union to withdraw a pending grievance and renegotiate the current collective-bargaining agreement; (4) bypassing the Union and dealing directly with the employees in the unit by soliciting them to enter into individual employment contracts; (5) refusing to abide by the collective-bargaining agreement; (6) discriminatorily discharging employees because of their union activity and failing to reinstate them to their former positions or substantially equivalent positions of employment.

On April 10, 1981, counsel for the General Counsel filed directly with the Board a motion to transfer the proceeding to the Board for summary judgment based on the fact that the Respondent's two letters fail to comport with Section 102.20 of the Board's Rules and Regulations requiring that Respondent "specifically admit, deny, or explain each of the facts alleged in the complaint . . ." In its answer the General Counsel has attached to its motion, as Exhibits B and D, two letters from the Respondent stating that the charges are false and that the only reason for the layoffs was a "matter of economics." Subsequently, on April 15, 1981,

the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent did not file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The Respondent's letters merely stating that the charges are false and that the layoffs were caused by a "matter of economics" do not comport with Section 102.20.² Nor has the Respondent filed a response to the Notice To Show Cause.

In view of the Respondent's failure to file an answer which comports with the Board's Rules and Regulations, and no other good cause having been shown therefor, the allegations of the complaints are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

40 and 7 United Super, Inc. d/b/a United Super is a Missouri corporation engaged in the retail sale of groceries and related items at its facility located at 812 West 40 Highway, Blue Springs, Missouri. The Respondent's annual gross volume of business at the facility exceeds \$500,000 and it annually purchases goods or services valued in excess of \$10,000 directly from suppliers located outside the State of Missouri.

¹ All dates herein 1980, unless otherwise indicated.

² See *Lloyd's Laundry & Dry Cleaning*, 250 NLRB 1369 (1980).

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Food and Commercial Workers Local No. 782 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

A. The Unit

The Independent Food Stores (herein the Association) has been an organization composed of employees engaged in the retail sale of groceries and related items, and which exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering collective-bargaining agreements with the Union. The Respondent, at all times material, has been and is an employer-member of the Association.

The following employees constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees employed by the employer-members of the Association, including the Respondent, working in the present and future retail establishments of the respective employer-members of the Association situated within Jackson, Clay, Platte and Cass Counties, Missouri, and Johnson and Wyandotte Counties, Kansas, engaged in handling or selling merchandise or performing other services incidental or related thereto, excluding supervisory employees within the meaning of the Act, and employees whose work is exclusively and wholly performed within the meat departments of the retail establishments.

B. The Representative Status of the Union

The Union is now, and has been, the exclusive bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act and the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period May 7, 1978, through May 9, 1981.

C. The Violations

On or about September 24 and 30 the Respondent, acting through James L. Choplin, did: (1)

threaten its employees with closure of the facility unless a pending grievance filed by an employee with the Union was withdrawn; (2) on or about September 30 and October 3 threaten its employees with discharge because of pending grievances filed with or by the Union; (3) on or about September 30 directed an employee to call the Union and solicit it to withdraw a pending grievance and renegotiate the current collective-bargaining agreement.

On or about July 24, the Respondent, acting through James L. Choplin, bypassed the Union and dealt directly with its employees in the above-described unit by soliciting employees to enter into individual employment contracts.

Since on or about August 3, the Respondent has refused to abide by the collective-bargaining agreement.

On or about the following dates the Respondent laid off or terminated the employees listed below because they joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The employees are:

| | |
|----------------|--------------|
| Betty Powers | August 20 |
| Aileen DeHart | September 13 |
| Tom Arnold | September 19 |
| Michael Martin | September 19 |
| Ray DeHart | October 3 |

Since on or about October 3, the Respondent has failed and refused, and continues to fail and refuse, to reinstate Ray DeHart to his former position of employment.

Accordingly, we find that by the aforesaid conduct found above the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them under Section 7 of the Act, and has discriminated in regard to the hire and tenure and terms and conditions of employment of the employees listed above, thereby discouraging membership in a labor organization, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.

Additionally, we find that by the aforesaid conduct found above the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such conduct, the Re-

spondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) and 2(6) and (7) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative actions which are necessary to effectuate the policies of the Act.

Having found that the Respondent discriminatorily laid off or terminated Betty Powers, Aileen DeHart, Tom Arnold, Michael Martin, and Ray DeHart it will be ordered that the Respondent offer those employees immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them. Any backpay found to be due shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). *Florida Steel Corporation*, 231 NLRB 651 (1977),³ and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As the unfair labor practices committed by the Respondent strike at the very heart of employee rights safeguarded by the Act, it shall be ordered that the Respondent be placed under a broad order to cease and desist from in any manner infringing upon the rights of employees guaranteed in Section 7 of the Act. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. 40 and 7 United Super, Inc. d/b/a United Super is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers Local No. 782 is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by the employer-members of the Association, including the Respondent, working in the present and future retail establishments of the respective employer-members of the Association situated within Jackson, Clay, Platte and Cass Counties, Missouri, and Johnson and Wyandotte Counties, Kansas, engaged in handling or selling merchandise or performing other services incidental or related thereto, excluding supervisory employees within the meaning of the Act, and employees whose work is exclusively and wholly performed within the meat departments of the retail establishments, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The above-named labor organization has been and now is the exclusive bargaining representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By the acts and conduct described in section III, C, above, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of their rights guaranteed in Section 7 of the Act, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. By the acts and conduct described in section III, C, above, the Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

7. By the acts and conduct described in section III, C, above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the appropriate unit, and the Respondent has thereby engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 8(d) of the Act.

³ Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, 40 and 7 United Super, Inc. d/b/a United Super, Blue Springs, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with closure of its facility unless pending grievances are withdrawn.

(b) Threatening employees with discharge because of pending grievances.

(c) Directing employees to contact the Union and solicit the Union to withdraw pending grievances and renegotiate the current collective-bargaining agreement.

(d) Bypassing the Union and dealing directly with employees in the appropriate unit by soliciting them to enter into individual employment contracts.

(e) Refusing to abide by the collective-bargaining agreement.

(f) Discouraging membership in United Food and Commercial Workers Local No. 782 by discharging, terminating, or otherwise discriminating against employees because of their union membership or activities.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Betty Powers, Aileen DeHart, Tom Arnold, Michael Martin, and Ray DeHart immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Upon request, bargain with the above-named labor organization as the exclusive representative

of all employees in the following appropriate unit over any question arising under the collective-bargaining agreement or, if that agreement has expired, bargain in good faith with the above-named labor organization with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement:

All employees employed by the employer-members of the Association, including the Respondent, working in the present and future retail establishments of the respective employer-members of the Association situated within Jackson, Clay, Platte and Cass Counties, Missouri, and Johnson and Wyandotte Counties, Kansas, engaged in handling or selling merchandise or performing other services incidental or related thereto, excluding supervisory employees within the meaning of the Act, and employees whose work is exclusively and wholly performed within the meat departments of the retail establishments.

(d) Post at its Blue Springs, Missouri, facility copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT threaten employees with closure of our facility unless pending grievances are withdrawn.

WE WILL NOT threaten employees with discharge because of pending grievances.

WE WILL NOT direct employees to contact the United Food and Commercial Workers Local No. 782 and solicit the Union to withdraw pending grievances and renegotiate the current collective-bargaining agreement.

WE WILL NOT bypass the above-named labor organization by dealing directly with employees in the unit described below by soliciting them to enter into individual employment contracts.

WE WILL NOT refuse to abide by the collective-bargaining agreement.

WE WILL NOT discourage membership in the above-named labor organization by discharging, terminating, or otherwise discriminating against employees because of their union membership or activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in exercise of rights guaranteed under Section 7 of the Act.

WE WILL offer Betty Powers, Aileen DeHart, Tom Arnold, Michael Martin, and Ray DeHart immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered by reason of our discrimination against them.

WE WILL, upon request, bargain with the above-named labor organization, as the exclusive representative of all employees in the bargaining unit described below, over any question arising under the collective-bargaining agreement or, if that agreement has expired, WE WILL bargain in good faith with the above-named labor organization with respect to rates of pay, wages, hours and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed by the employer-members of the Independent Food Stores Association, including 40 and 7 United Super, Inc. d/b/a United Super, working in the present and future retail establishments of the respective employer-members of the Association situated within Jackson, Clay, Platte, and Cass Counties, Missouri, and Johnson and Wyandotte Counties, Kansas, engaged in handling or selling merchandise or performing other services incidental or related thereto, excluding supervisory employees within the meaning of the Act, and employees whose work is exclusively and wholly performed within the meat departments of the retail establishments.

40 AND 7 UNITED SUPER, INC. D/B/A
UNITED SUPER